IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No.54 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LALLUBHAI JOGIBHAI PATEL

Versus

COMMISSIONER OF WEALTH-TAX

Appearance:

MR JP SHAH for Applicant No. 1

MR MANISH R BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 23/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income Tax Appellate Tribunal Ahmedabad Bench 'A' has referred the following question for the opinion of this Court under Section 27(1) of the Wealth Tax Act, 1957 (the Act) at the instance of the assessee :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the penalty of Rs.7,57,000/- u/s.18(1)(c) of the W.T. Act, 1957 ?"

2. The applicant - assessee had proposed the following three questions of law :

"(1). "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the penalty of Rs.7,57,000/- u/s.18(1)(c) of the Wealth Tax Act, 1957 ?"

(2). "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the penalty for concealing the wealth viz. silver for the asst.yr.1969-70 in the return filed on 25-9-1969 which silver became the asset of the assessee in accordance with a settlement letter dated 25-3-1974 from the asst.yr.1968-69 ?"

(3). Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the penalty in respect of the addition of Rs.4,28,600/- which consisted of cash credit of Rs.2,07,500/- and the other amount of Rs.2,29,052/- all of which were very much there in the books of accounts ?" "

3. The Assessment Year is 1969-70 and the relevant valuation date is 31-03-1969. The assessee, an individual, filed return of wealth on 25-09-1969 showing net-wealth of Rs.1,55,123/-. On 31-12-1976 assessment was framed at a figure of Rs.17,02,948/-. Three principal additions were - (i) value of silver Rs.7,28,066/-; (ii) undisclosed cash being amount of prize money Rs.3 lacs; and (iii) value of assets appearing in balance sheet for agricultural set Rs.6,25,082/-.

4. The assessee carried the matter in appeal and after partial relief granted by the Commissioner of Wealth Tax (Appeals) the net-wealth was determined at a figure of Rs.14,93,800/-.

5. Subsequently the assessee's appeal before the Tribunal also came to be allowed partially and

accordingly after giving effect to the order of the Tribunal net-wealth was computed on 07-11-1981 at Rs.9,12,000/-.

6. In the meantime, the Assessing Officer levied penalty on 29-01-1980 under Section 18(1)(c) of the Act at Rs.13,70,000/-. According to the Assessing Officer the value of silver was worked out at Rs.6,32,943/- after deducting liabilities and value of non-agricultural assets after deduction of liabilities was worked out at Rs.4,28,600/-. There was no change in the figure of cash on hand which was Rs.3 lacs. The minimum penalty was thus worked out at Rs.13,61,543/- and the maximum penalty at Rs.27,23,086/-. The Assessing Officer levied penalty of an amount equal to the next higher thousand of the minimum penalty which worked out to Rs.13,70,000/-.

7. The assessee carried the matter in appeal before the Commissioner of Wealth Tax (Appeals) who granted partial relief and reduced the penalty to Rs.10,62,000/-. The Tribunal, for the reasons stated in its order dated 31-08-1992, granted further relief of Rs.3,05,000/- and thus confirmed the penalty at Rs.7,57,000/-.

8. Mr.J.P.Shah, learned advocate appearing on behalf of the applicant - assessee, submitted that the Tribunal had erred in confirming the penalty because the additions to the net-wealth had been made on the basis of the settlement which was arrived at between the parties on the basis of assessee's proposal in the form of letter dated 25-03-1974 (Annexure-H). It was submitted that the Assessing Authority had merely relied on the agreement between the parties and had failed to discharge onus independent of the said agreement for the purpose of making the addition, and in the circumstances in absence of any independent evidence brought on record by the Revenue, penalty could not have been sustained on these facts. He invited attention to the submission made before the Tribunal on behalf of the assessee that no penalty was imposed for Assessment Years 1970-71 to 1972-73 and later years on similar set of facts. That the Tribunal had failed to take these aspects into consideration while passing the impugned order.

9. Mr.Manish R. Bhatt, learned Senior Standing Counsel for the Revenue, submitted that the assessee filed return of income on 25-09-1969 showing wealth of Rs.1,55,123/- which included a sum of Rs.95,123/- being the assessee's capital in the firm of M/s.Lallubhai Jogibhai. That the customs authorities had seized silver weighing 2432 Kg. on 26-08-1967 from a place which belonged to the assessee, but the assessee claimed that

the said silver was purchased for carrying on the business of manufacturing of silver utensils by the firm M/s. Lallubhai Jogibhai. That the existence of the firm was not accepted in the income proceedings for Assessment Year 1968-69 and the assessee was treated as a proprietor of the alleged firm. The assessee carried the matter in appeal. The assessment was set aside. It was at that stage that the assessee has come forth with so-called proposal- for settlement and in the circumstances the assessee was not entitled to any relief on the basis of the agreement as contended by the assessee. It was, therefore, urged by Mr.Bhatt that the department had established concealment in as much as the additions of different assets made by the department had not been included in the return of wealth filed by the assessee and, therefore, the Tribunal was justified in confirming the penalty levied under Section 18(1)(c) of the Act.

10. For the reasons that follow hereinafter the question referred to the Court is left unanswered and the Tribunal shall, after giving full and proper opportunity to both the sides, to place all the relevant and necessary evidence on record, decide the matter afresh. This course of action is being adopted in light of the fact that the record available in the present reference is not sufficient to render opinion.

11. It is an admitted position between the parties that during Income Tax proceedings for Assessment Year 1968-69 the firm of M/s.Lallubhai Jogibhai was treated as a proprietary concern of the assessee. The said order was challenged in appeal. The Appellate Assistant Commissioner set aside the assessment directing the Assessing Authority to carry out necessary exercise. It was at this stage that the assessee proposed settlement vide letter dated 25-03-1974. It is necessary to take note of the fact that the proposal for settlement was for three Assessment Years viz. Assessment Years 1968-69, 1969-70 and 1971-72. The authorities including the Tribunal have failed to bring on record the outcome of the said proposal i.e. whether the same was accepted for the preceding year and succeeding year, as to what was the treatment in relation to various proposals made in the said letter and the orders made by the authorities in assessment and penalty proceedings, if any. In such a situation, whether the agreement forms basis of the overall settlement between the parties or not has to be appreciated in light of the treatment given for all the three Assessment Years and a single Assessment Year cannot be isolated. If it is to be separately dealt with the authorities must assign valid reason duly supported

by cogent evidence available on record.

12. The Tribunal has failed to apply its mind to this aspect of the matter. It is necessary for the Tribunal to record findings in relation to the same assets for all the three years and the Tribunal should ensure that similar treatment is meted out to the same assets for all three years. The Tribunal has recorded that "..... The preponderance of probabilities clearly go in favour of the view taken by the department that the silver found in 1967 continued to be in possession of the assessee on 31-3-1969. There is every reason to believe that the silver was in possession of the assessee and still was not shown to the department. ....." The Tribunal failed to appreciate that the possession of the assets was not a deciding factor, one way or the other. For an asset to be included in net-wealth the asset is "to belong" to an assessee on the valuation date. Whether the asset in question belonged to the assessee on 31-03-1968 is also required to be borne in mind while deciding whether the assessee was liable to penalty for the year under consideration.

13. At the same time, it is also necessary for the Tribunal to record findings as to whether the proposal for settlement which came from the assessee on 25-03-1974 was because of investigation by the department which would be a relevant factor and may point towards concealment or not. This was specifically pleaded before the Tribunal by the departmental representative but the Tribunal has failed to record any finding in relation to the said submission.

14. In the view that is being taken the decisions cited at the Bar viz. - (i) Commissioner of Income-Tax Vs. Suresh Chandra Mittal, [2000] 241 ITR 124 (M.P.); and (ii) Commissioner of Income-Tax Vs. Suresh Chandra Mittal, [2001] 251 ITR 9 (S.C.) shall be taken into consideration by the Tribunal while deciding the appeal.

15. The Reference is, therefore, return unanswered and stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-

[D.A.MEHTA,J] [H.N.DEVANI,J]

* * *

'Bhavesh'